

Theresa M. Gillis (TG-2036)
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*Attorneys for Defendant
 The Timken Company*

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

x

GEORGE EDWARD McCAIN,)
)
 Plaintiff,)
)
 -against -)
) **Civil Action No. 07-CV-5729 (JSR)**
 RAHAL LETTERMAN RACING LLC, at al.)
)
 Defendants.)

x

**DECLARATION OF SCOTT A. SCHERFF IN SUPPORT OF
 DEFENDANT THE TIMKEN COMPANY'S MOTION TO DISMISS**

I, Scott A. Scherff hereby declare as follows:

1. I make this Declaration in support of defendant The Timken Company's Motion to Dismiss. The statements made in this Declaration are based on my own personal knowledge and on information that I believe to be true and correct following a reasonable investigation of the books and records of The Timken Company and discussions with employees. If called as a witness, I could and would testify competently to the following facts.

2. I am Assistant General Counsel and Corporate Secretary of The Timken Company. The Timken Company is a corporation organized and existing under the laws of the State of Ohio with its principal place of business at 1835 Dueber Avenue S.W., Canton, Ohio 44706.

3. The Timken Company manufactures friction management and power transmission products, principally anti-friction bearings and specialty steels, which are sold throughout the United States and the world. Among The Timken Company's products are high-performance bearings used in racing cars. As part of its promotional efforts and to showcase its products, The Timken Company, through its Timken Motorsports program, sponsors racing teams and affiliated drivers. In 2005, with Rahal Letterman Racing LLC, The Timken Company sponsored race car driver Danica Patrick, among others.

4. The Complaint alleges that The Timken Company "reproduced without Plaintiff's permission one of the Photographs" on which Plaintiff claims to own a copyright "on so-called 'hero cards' for Timken, which were distributed to the public by Timken in 2005. (See Exhibit 29)." The Timken Company did not create or reproduce the "hero card" attached as Exhibit 29 to the Complaint. Based upon my investigation, The Timken Company received at least one, and based on past custom and practice may have received up to approximately fifty, "hero cards" such as Exhibit 29 from Rahal Letterman Racing LLC. Based on past custom and practice, if The Timken Company received multiple copies of the "hero card" at issue, the cards would have been distributed without charge to employees and customers in the United States. My investigation has not identified any instance in which The Timken Company distributed such a "hero card" in the State of New York.

5. I am aware that The Timken Company's products reach the State of New York. Such products are sold through a wholly-owned subsidiary, The Timken Corporation, an Ohio corporation with its principal place of business in Canton, Ohio, and through distributors, who are independent contractors.

6. The Timken Company has no offices or employees in the State of New York.

7. The Timken Company does not own or lease any plant, real property or equipment in the State of New York.

8. The Timken Company does not maintain any bank accounts in the State of New York.

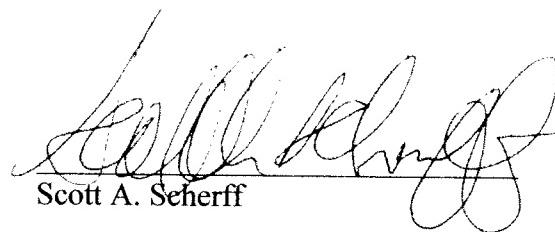
9. The Timken Company is not registered to do business in the State of New York and has no agent for service of process in the State of New York.

10. The Timken Company does not have any telephone listings in the State of New York.

11. The Timken Company did not pay New York State taxes in 2004, 2005 or 2006.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Date: July 30, 2007



A handwritten signature in black ink, appearing to read "Scott A. Seherff".

Scott A. Seherff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *DECLARATION OF SCOTT A. SCHERFF* in support of *DEFENDANT THE TIMKEN COMPANY'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS* was served on July 31, 2007, by electronic filing on all parties so registered and via overnight courier as set forth below:

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	<p>Carl E. Person Carl E. Person - An Individual Practitioner 325 W. 45th St. - Suite 201 New York, NY 10036</p> <p><i>Counsel for Defendant Ellen Emerson d/b/a Hondabeat.com</i></p>
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/s/Theresa M. Gillis
Theresa M. Gillis (TG-2036)

Dated: New York, New York
July 31, 2007